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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/127,316 07/31/98 CHING

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000326 IM22/1130  
CHEVRON CORPORATION LAW DEPARTMENT  
PATENT DIVISION  
PO BOX 6006  
SAN RAMON CA 94583-0806

EXAMINER

NOLAN, S

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

11/30/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/127,316

Applicant(s)  
CHING et al

Examiner  
Sandra Nolan

Group Art Unit  
1772



☒ Responsive to communication(s) filed on Oct 16, 2000

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1, 2, 4-13, 15-31, 33-90, and 92-98 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 2, 4-13, 15-31, 33-90, and 92-98 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Request for Copy of Claims***

1. It is requested that Applicants submit a clean copy of all of the pending claims with their next response. In view of the large number of claims and the amendments thereto, such a submission would facilitate the Examiner's consideration of the claims.

### ***Information Disclosure Statement***

2 The information disclosure statement submitted on October 16, 2000 (Paper No. 10) has been considered by the examiner. A copy of the initialed form PTO-1449 is enclosed.

### ***Rejections Withdrawn***

3. The 35 USC 112 rejection of claims 12, 13, 15-31 and 33-77 as set out in paragraph 9 of the Office Action of June 19, 2000 (Paper No. 8) is withdrawn in view of Applicants' amendments to the claims in the response dated September 18, 2000 (Paper No. 9).

4. The 35 USC 103 rejection of claims 1, 2, 4-13, 33-90 and 92-98, as unpatentable over Ching et al (US 5,859,145) in view of Pampas et al (US ,3873,644) as set forth in paragraph 11 of Paper No. 8, is withdrawn in view of Applicants' comments in Paper No. 9.

### ***New Rejections***

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 11, 12, 13, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tellier et al (US 3,497,571).

Tellier et al show compositions containing copolymers of alkyl acrylates and acrylic esters having cyclohexyl-3-ene moieties as ester groups. See the abstract and col. 2, lines 18-42.

The oxygen scavenging and chemical/physical properties recited in claims 12, 23 and 24 would be inherent in the polymers of Tellier et al, due to the identities of the copolymerized monomers used.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4-13, 15-31, 33-90, and 92-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ching et al (US 5,627,239).

Ching et al show allylic-hydrogen containing oxygen scavenging polymers used in compositions to make containers and films (col. 26, lines 55+). The polymers may contain cyclic allylic moieties as pendant groups (col. 6, line 18 and col. 17, lines 52+). The use of reactive

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extrusion is taught at col. 32, lines 25+. The cobalt catalysts claimed recited at col. 14, lines 26+. The other metal catalysts are discussed at col. 20, lines 39+. The use of photoinitiators is referred to at col. 25, lines 56+.

In the absence of an objective showing re: the superiority of products made using the specific cyclic moieties recited in Applicants' independent claims, it would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ suitable pendant cyclic allylic moieties as the allylic hydrogen-containing moieties in the metal catalyzed polymers of Ching et al and to employ them, along with optional photoinitiators, to make films and containers having excellent physical and processing properties.

The motivation to employ cyclic allylic hydrogen-containing moieties in the production of the polymers, compositions, packages and films of Ching et al is found at col. 6, lines 18-48 of the patent, wherein the chemical moieties employed and the use of the resultant polymers in applications calling for excellent physical and processing properties are taught.

#### *Response to Arguments*

9. Applicant's arguments with respect to claims 1, 2, 4-13, 15-31, 33-90 and 92-98 have been considered but are moot in view of the new ground(s) of rejection.

#### *Citation of Interest*

10. Ching et al (WO 99/48963) is cited of interest as teaching Applicants' pendant cyclic allylic groups.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra M. Nolan, whose telephone number is (703) 308-9545. The examiner can normally be reached on Monday through Thursday from 7:00 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ellis P. Robinson, can be reached on (703) 308-2364. The fax phone number for the organization where this application is assigned is (703) 305-5408.

The telephone number for the receptionist is (703) 308-0661.



Ellis Robinson  
Supervisory Patent Examiner  
Technology Center 1700

SMN/smn  
November 27, 2000  
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